

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
NORTHERN DIVISION**

Michelle Aguilar,)	
)	
Plaintiff,)	
)	
V.)	C.A. No.3:09-CV-00406
)	
Hubbell Lenoir City, Inc.,)	
)	
Defendant.)	
_____)	

**DEFENDANT’S MOTION TO COMPEL RESPONSES TO DISCOVERY REQUESTS
AND REQUEST FOR SANCTIONS**

Defendant, Hubbell Lenoir City, Inc., files this Motion to Compel Plaintiff to respond to pending discovery requests and for Sanctions based upon Plaintiff’s repeated failure to cooperate in the discovery process, and would show as follows:

On October 13, 2010, this Court granted Plaintiff’s counsel’s Motion to withdraw and Plaintiff began proceeding as a *pro se* litigant in this matter. [Doc. 19]. Her last known contact information was provided to the Court. [Doc. 19].

On November 3, 2010, Defendant served interrogatories, requests for production and requests for admission to plaintiff at her last known contact information given by the Court. A copy of the cover letter is attached as Exhibit A, a copy of the interrogatories is attached as Exhibit B, a copy of the requests for production is attached as Exhibit C, and a copy of the requests for admission is attached as Exhibit D. Pursuant to Rules 33 and 34, Federal Rules of Civil Procedure, responses to the discovery requests were due on December 6, 2010.

On December 16, 2010, defense counsel sent a letter to plaintiff explaining that responses are past due. In the letter, defense counsel also explained that it still did not have a

current telephone or email address with which to communicate with her. A copy of the letter is attached as Exhibit E.

On December 27, 2010, defense counsel attempted again to communicate with plaintiff via email about the failure to respond to discovery. It appears from the Microsoft Exchange reply “delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination,” that plaintiff may have received the communication but did not acknowledge the receipt notification. A copy of the email and delivery response attached as Exhibit F.

As of February 4, 2011, defense counsel still had not received any response from plaintiff. Accordingly, defense counsel requested a conference with the Magistrate Judge pursuant to the Scheduling Order [Doc. 6]. The Court scheduled a telephonic conference for March 2, 2011 at 2:30 p.m. A notice of the conference was sent to plaintiff electronically by the Judge’s chambers. A copy of the email is attached as Exhibit G. The Clerk of Court also mailed a notice of the conference to plaintiff at her last known address, via certified mail. That notice was received. A copy of the certification on record with the Court is attached as Exhibit H. [Doc. 20].

On March 2, 2011, the Court held a telephone conference regarding the outstanding discovery requests. Plaintiff did not participate despite notice being sent electronically and via certified mail.

At this time, plaintiff’s responses are three months past due. Plaintiff still has failed to communicate with defense counsel or respond to any efforts to contact her.

WHEREFORE, defendant respectfully requests that sanctions be imposed for plaintiff’s failure to cooperate in the discovery process. Specifically, defendant requests the

following: (1) an award of costs and fees incurred in filing and pursuing this Motion; (2) a determination that all Requests to Admit be deemed admitted; (3) plaintiff be deemed to have waived any objections to the pending interrogatories and requests for production; and (4) plaintiff be ordered to provide full and complete responses to the pending interrogatories and requests for production within ten (10) days. Defendant further requests that if plaintiff does not respond in a timely manner to the interrogatories and requests for production and otherwise cooperate in the discovery process, that defendant be permitted to proceed with filing a motion for dismissal of the claims and for a default judgment.

Respectfully submitted:

By: s/Ashley B. Abel

Ashley B. Abel (S.C. Bar No. 10097)

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ATTORNEYS FOR DEFENDANT

This 11th day of March, 2011

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Motion to Compel Responses to Discovery Requests and Request for Sanctions was served on Pro Se Plaintiff by causing a copy of same to be delivered via U.S. Mail and addressed as follows.

Ms. Michelle Aguilar
13901 Midway Road
Dallas, TX 75244

s/Ashley B. Abel
Ashley B. Abel

This 11th day of March, 2011.